

## THE INSIDER INFORMATION LAW: NOW IT IS SERIOUS

On 3 August 2018 numerous amendments to Federal Law No. 224-FZ On Combating Unlawful Use of Insider Information and Market Manipulation (the "**Insider Information Law**") were published. The amendments will take effect on 1 May 2019. Below we summarise some of the key amendments that will change the rules of the game on the market.

### 1. THE DEFINITION OF INSIDER INFORMATION HAS BEEN SUBSTANTIALLY REVISED

Until the amendments take effect, insider information will continue to be defined as precise and specific information that: (i) has not been publicly disclosed or provided; (ii) disclosure and provision of which may have a material impact on the price of financial instruments, foreign currencies or products; and (iii) has been included on an exhaustive list of insider information approved by the regulator and/or each issuer. Once the amendments are in force, the reference to a list of insider information approved by the Central Bank of Russia/issuer will be removed from the definition. As a result, information will be deemed insider information only by virtue of the fact that it is not publicly available and its distribution may have a material impact on the price of financial instruments, foreign currencies or products, irrespective of whether it has been included on lists of insider information approved by the Central Bank of Russia/the issuer or not. This change is crucial, because it heralds a departure from the formalistic approach to insider information currently in place towards the principles characteristic of more developed markets (particularly the EU and the US).

Issuers and other parties that must now draw up lists of what constitutes insider information for them (management companies, organisers of trading, clearing organisations, professional securities market participants, etc.) will still have to maintain such lists, on which they will need to include, among other things, information included on the list of insider information approved by the Central Bank of Russia. In other words, the Central Bank of Russia will determine a kind of minimal list of insider information, leaving it up to issuers and other parties themselves to determine what other information may be deemed insider information in relation to them.

### 2. THE MANNER IN WHICH INSIDER INFORMATION MAY BE DISCLOSED HAS BEEN CHANGED

After the amendments come into effect, insider information included on the list maintained by the Central Bank of Russia will be subject to disclosure in the manner and time frames determined by the Central Bank of Russia, whereas the manner and time frames of disclosing any additional information which issuers have included on their lists of the insider information will be determined by the issuers themselves.

### 3. THE LIST OF PARTIES DEEMED INSIDERS HAS BEEN CHANGED

Companies that are included to the register maintained pursuant to the competition legislation and have a dominant position on any market will be removed from the list of insiders set out in the Insider Information Law after the amendments will take effect.

On the other hand, the insiders list will include persons directly or indirectly controlling at least 25% of votes in the highest management body of issuers, management companies, organisers of trading, clearing organisations or professional securities market participants (the current iteration of the Insider Information Law captures only direct control of 25% of votes).

Also, it is now clarified that after the amendments will take effect the insiders will include any persons obtaining access to information about the preparation and/or submission of any voluntary, compulsory or competing purchase offer, notice of squeeze-out right or demand to purchase securities (according to the current iteration of the Insider Information Law only persons having access to information about the submission of any voluntary, compulsory or competing offer to purchase securities are deemed to be insiders).

#### **4. THE RULES ON DISCLOSURE OF INSIDER INFORMATION TO THIRD PARTIES HAVE BEEN AMENDED**

As previously, the Insider Information Law permits the disclosure of insider information to third parties within their contractual obligations. However, after the amendments come into effect, such disclosure will be permitted to legal entities (i) only on condition that at the time when the contract with the legal entity is entered into the latter is informed by the disclosing party of the

requirements of the Insider Information Law, of the penalties for unlawful use of insider information, and of the fact that the legal entity will be included on the disclosing party's list of insiders; and (ii) only after such legal entity has been included on the list of insiders of the disclosing entity.

#### **5. THE PROCEDURE FOR THE CONDUCT OF CHECKS BY THE CENTRAL BANK OF RUSSIA HAS BEEN CHANGED / NEW POWERS OF THE REGULATOR**

Although in its current iteration the Insider Information Law grants the regulator the power to conduct checks of compliance by legal entities and individuals (both Russian and foreign) with the legislation regulating insider information, for the first time procedural specifics are set out as to how checks by the Central Bank of Russia of organisations other than financial institutions are to be carried out. The amendments also grant the regulator the power to inspect grounds, premises and documents (with the exception of documents containing tax or state secrets and privileged communications) of legal entities and individuals (subject to consent of such individuals) in relation to which/whom a check is being conducted or in relation to which/whom there is sufficient reason to believe they possess information that must be checked.

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